



POLICE DEPARTMENT

June 9, 2010

MEMORANDUM FOR: Police Commissioner

Re: Lieutenant Rafael Rodriguez
Tax Registry No. 878493
Internal Affairs Bureau
Disciplinary Case No. 83729/08

Sergeant Luisa Mifsud
Tax Registry No. 914142
Internal Affairs Bureau
Disciplinary Case No. 83730/08

The above-named member of the Department appeared before me on July 31, 2009 and December 16, 2009, charged with the following:

Disciplinary Case No. 83729/08

1. Said Lieutenant Rafael Rodriguez, assigned to the IAB Group 52, while on-duty, on February 27, 2007 at a location known to this Department, in Bronx County, did fail and neglect to prepare required reports to wit: Report of Suspected Child Abuse or Maltreatment form as required by Social Service Law, Title 6 Child Protective Services, Section 413, an Aided Card, and Domestic Incident Report. (*As amended*)

P.G. 215-03 INVESTIGATION AND REPORTING OF ABUSED,
NEGLECTED, OR MALTREATED CHILDREN

2. Said Lieutenant Rafael Rodriguez, assigned to the IAB Group 52, while on-duty, on February 27, 2007 at a location known to this Department, in Bronx County, having taken property into custody to wit: funds removed during arrest processing of an individual known to the Department, did thereafter fail and neglect to provide a copy of the corresponding Property Clerk's Invoice worksheet (PD521-142a) as required. (*As amended*)

P.G. 203-05 PERFORMANCE ON DUTY GENERAL REGULATIONS

COURTESY • PROFESSIONALISM • RESPECT

3. Said Lieutenant Rafael Rodriguez, assigned to the IAB Group 52, while on-duty, on February 27, 2007 at a location known to this Department, in Bronx County, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Lieutenant failed to notify the Administration of Children's Services of suspected child abuse or neglect. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT

4. Said Lieutenant Rafael Rodriguez, assigned to the IAB Group 52, while on-duty, on February 27, 2007 at a location known to this Department, in Bronx County, did fail and neglect to conduct an investigation in that said Lieutenant did fail to determine whether an individual known to this Department had outstanding warrants. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT

5. Said Lieutenant Rafael Rodriguez, assigned to the IAB Group 52, while on-duty, on February 27, 2007 at a location known to this Department, in Bronx County, did fail and neglect to conduct an investigation in that said Lieutenant did fail to charge an individual known to this Department with an appropriate section of the Penal Law during an arrest. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 PROHIBITED CONDUCT

Disciplinary Case No. 83730/08

1. Said Sergeant Luisa Mifsud, assigned to the IAB Group 52, while on-duty, on February 27, 2007 at a location known to this Department, in Bronx County, did fail and neglect to prepare required reports to wit: Report of Suspected Child Abuse or Maltreatment for as required by Social Service Law, Title 6 Child Protective Services, Section 413, an Aided Card, and Domestic Incident Report. (*As amended*)

P.G. 215-03 INVESTIGATION AND REPORTING OF ABUSED,
NEGLECTED, OR MALTREATED CHILDREN

2. Said Sergeant Luisa Mifsud, assigned to the IAB Group 52, while on-duty, on February 27, 2007 at a location known to this Department, in Bronx County, having taken property into custody to wit: funds removed during arrest processing of an individual known to the Department, did thereafter fail and neglect to provide a copy of the corresponding Property Clerk's Invoice worksheet (PD521-142a) as required. (*As amended*)

P.G. 203-05 PERFORMANCE ON DUTY – GENERAL REGULATIONS

3. Said Sergeant Luisa Mifsud, assigned to the IAB Group 52, while on-duty, on February 27, 2007 at a location known to this Department, in Bronx County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Sergeant failed to notify the Administration of Children's Services of suspected child abuse or neglect. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 PROHIBITED CONDUCT

4. Said Sergeant Luisa Mifsud, assigned to the IAB Group 52, while on-duty, on February 27, 2007 at a location known to this Department, in Bronx County, did fail and neglect to conduct an investigation in that said Sergeant did fail to determine whether an individual known to this Department had outstanding warrants. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 PROHIBITED CONDUCT

5. Said Sergeant Luisa Mifsud, assigned to the IAB Group 52, while on-duty, on February 27, 2007 at a location known to this Department, in Bronx County, did fail and neglect to conduct an investigation in that said Sergeant did fail to charge an individual known to this Department with an appropriate section of the Penal Law during an arrest. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 PROHIBITED CONDUCT

The Department was represented by Adam Sheldon, Esq., Department Advocate's Office, Respondent Rodriguez was represented by Peter Brill, Esq. and Respondent Mifsud was represented by Anthony DiFiore, Esq.

The Respondents, through their counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent Rodriguez is found Guilty of Specification Nos. 1, 3 and 5; and Not Guilty of Specification Nos. 2 and 4. Respondent Mifsud is found Not Guilty of Specification Nos. 1-5.

INTRODUCTION

It is not in dispute that on February 27, 2007; approximately 14 members of the Internal Affairs Bureau (IAB) Group No, 52 conducted an edit operation. That is, the team was sent out to do enforcement activity and on that date, the team attempted to buy drugs on the street in Bronx County near the criminal courthouse. It is also not in dispute that the ghost reported that the undercover officer was able to purchase drugs in a three-party set. Ketsy Bracero (Bracero) was the steerer who arranged to get the drugs for the undercover. Steven Rodriguez (Steven) obtained the drugs from inside his van and he was the van operator; and Rodney Thomas was the front passenger in the van who was in possession of the prerecorded buy money. Once the decision was made to close in on the van and make the arrests, it is also not in dispute that Respondents Rodriguez and Mifsud, who were in a vehicle three blocks away, responded to the van location. All occupants of the van were removed and handcuffed except for Steven's five-year old minor. It is also not in dispute that the custody of this minor child was released to Rosemary Matos (Matos), an occupant of the van.

What *is* in dispute is whether both Respondents Rodriguez and Mifsud (who were similarly charged) 1) failed and neglected to prepare required reports, to wit: Report of Suspected Child Abuse or Maltreatment, an Aided Report, and a Domestic Incident Report; 2) having taken property into custody, to wit: funds removed during arrest processing, failed and neglected to provide a copy of the Property Clerk's Invoice to Steven; 3) failed to notify the Administration for Children's Services (ACS) of suspected child abuse or neglect; 4) failed and neglected to conduct an investigation to determine whether Matos had outstanding warrants; and 5) failed and neglected to conduct an

investigation to charge Steven with an appropriate section of the Penal Law during an arrest.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Sergeant Matthew Chapman and Detective Ronald Johnson as witnesses.

Sergeant Matthew Chapman

Chapman, a 13-year member of the Department, is currently assigned to the IAB Special Investigations Unit. He has been in IAB for five years and the Special Investigations Unit for a little over two years. Chapman's responsibilities include conducting confidential investigations of members of the service, primarily those assigned to IAB, or those in the rank of Captain and above.

In March of 2007, Chapman became aware of an investigation into an incident that occurred on February 27, 2007, that involved IAB Group 52. Chapman was not the original investigator on the case and took over in June of 2007 when the original investigator was transferred out of IAB. During the course of the investigation, there were three officers who were found to be possible subjects: Respondent Rodriguez, Respondent Mifsud, and Detective Johnson. Chapman does not know either of the Respondents and has never worked with either of them before.

On February 27, 2007, IAB conducted an edit operation, which is where officers are sent out to do enforcement activity. Approximately 14 members of the Department

were involved with the edit operation that day. Following an investigation of the operation, the Respondents were alleged to have failed to follow the appropriate Patrol Guide (PG) procedures for when there is suspected child abuse and for when a child is present when the parent is arrested.

The original officers assigned to investigate this case conducted some PG interviews and obtained background information on the subject officers. After taking over, Chapman did background checks on the civilians involved in the investigation to see if they were dangerous or wanted by the Department. He also conducted PG interviews, as well as interviews of the civilian witnesses involved.

Chapman was able to locate the complainant in this case, Steven, when he showed up to a court date in the Bronx related to the matter he was arrested for during the edit operation. Chapman approached Steven's defense attorney and was granted an interview with him. Detective Thomas was present with Chapman at that interview [Department's Exhibit (DX) 1A and 1B are the audio recording and the transcript, respectively, of Steven's interview].

Chapman also conducted interviews with Bracero and Matos. Matos was stopped by Group 52 during the edit operation and eventually Steven's child was turned over to her. During the background check of Matos, Chapman learned that she was a "career criminal" and that between 1987 and 2007 she was arrested 20 times. Of those 20 arrests, 14 were felonies, and one was a violent felony. Matos was convicted of ten of these felonies and served time in prison as well as being placed on probation.

The interview with Matos took place at IAB central headquarters at 315 Hudson Street (DX 3A and 3B are the audio recording and the transcript, respectively, of Matos'

interview). The interview with Bracero took place at Chapman's unit, by the Bronx courthouse (DX 2A and 2B are the audio recording and the transcript, respectively, of Bracero's interview). Bracero was located at a methadone clinic near the address of the original edit operation. Chapman was present for each of the three interviews with the civilians and they were memorialized through a worksheet that he prepared as well as being tape recorded and subsequently transcribed.

None of the three civilian witnesses were available for trial, despite the efforts of Chapman to track them down. Chapman was not able to interview Rodney Thomas, the third person arrested during the edit operation, as he was incarcerated as a result of the operation. Chapman knows that the cases against Steven and Bracero are over, but does not know their dispositions.

The Respondents, as well as most members of the IAB edit team, were also interviewed by Chapman. There came a time when Chapman substantiated certain allegations against the Respondents based on PG interviews, civilian witness interviews, and Department paperwork. Chapman determined that certain procedures were not followed in regard to situations when there is suspected child abuse and he immediately made a notification with the central registrar, filled out the hard copy of suspected child abuse form, and notified ACS.

On cross-examination by the Assistant Department Advocate (Advocate), Chapman testified that Steven was interviewed on August 1, 2007, and that ACS paperwork was filled out on July 2, 2007. This case was originally opened by IAB on April 9, 2007, and the original call out from the day of the incident, February 27, 2007, was concerning an allegation made by Steven against officers based out of upper

Manhattan. Steven alleged that his child had been left with a “dope fiend” and the call out was received by Sergeant Sucone and Sergeant Brennan from IAB Group 12.

Chapman got the case on July 2, 2007. Each of the three civilians that he interviewed, Bracero, Steven, and Matos, have criminal records and felony convictions. However, Chapman stated that he would trust them. Matos was convicted of criminal sale of a controlled substance in the fifth degree and had other arrests for drug-related offenses. Chapman stated that he does not have Bracero’s folder in front of him, but believes that she also had felony convictions. He also stated that he does not have Steven’s folder in front of him, but believes that he did time in jail for robbery or a related offense.

Chapman testified that during his interview with Steven he denied having ever sold drugs, yet Chapman believed that Steven had been selling drugs when he was arrested. Chapman stated that this was one statement where he did not believe what Steven told him. When interviewed, Bracero stated that she had been arrested for selling cigarettes in the past. Chapman then stated that when he was interviewing these three witnesses, he did not really get into the specifics of the incident of their arrest.

Chapman believes that Bracero was present when Steven identified Matos as the child’s aunt, but he does not know specifically what members of the Department were present when the identification was made. Chapman was not present for the incident on February 27, 2007. Chapman stated that he was not able to determine the order in which the members of the edit team arrived on the scene.

Based on Chapman’s interviews with Johnson (DX 7 and 7A are the audio recording and the transcript, respectively, of Johnson’s June 27, 2007 interview, and DX

8 and 8A are the audio recording and the transcript, respectively, of Johnson's September 5, 2007 interview), he believes that both Respondent Rodriguez and Respondent Mifsud were at the scene at the time that the child was removed from the van and given to Matos. Chapman conducted two interviews with Johnson. In the first interview, Johnson did not recall which supervisor was on the scene, but in the second interview he was presented with more information and stated that both Respondents were on the scene. This additional information was that a baby was crying and screaming the whole time, and that the civilian witnesses described a Hispanic male and a Hispanic female as being in charge.

In Chapman's experience, not all individuals that come into contact with the police need to have a warrant check run on them. But, a person that he would leave a child with is someone who he would run for warrants. Matos was ultimately released when the officers determined that there was not probable cause to arrest and a UF-250 (Stop, Question and Frisk Report) was filled out. PG section 212-11 [Respondent's Exhibit (RX) A] covers this and also states that a determination of whether or not probable cause to arrest exists should be made as expeditiously as possible. Chapman has examined PG section 215-01 (RX B) which covers the care of a dependent child under 18 years old after a parent's arrest.

On cross-examination, Chapman identified the Organized Crime Control buy report and the ghost report (RX C and D, respectively), but he is not familiar with these types of reports. Chapman drafted a report based on his interview with Bracero. The report states that she was not sure if any officers saw or removed the child and that she was the first one arrested and placed in the police van.

Chapman stated that he was present for the interview of Respondent Mifsud and that he scheduled a follow-up interview with her, but she had surgery the day of the interview. Chapman tried to reschedule the interview, but he never performed a second PG interview as he felt that at that point in time he had enough information to charge Respondent Mifsud. Chapman stated that he did not remember interviewing Detective Brown.

During his second interview with Johnson, he informed Chapman that Respondent Mifsud was on the scene and that she saw the child. Chapman stated that he did not know who the first supervisors on the scene were. In his testimony, Johnson stated that he believed that there were three supervisors present, but he was not sure if Sergeant Seabrooks was ever on the scene. Lieutenant Skalso was part of the edit operation, but Chapman does not believe that he was ever on the scene.

Chapman stated that Seabrooks was never charged because Johnson never established that Seabrooks knew about the child in the van and there was nothing to suggest that he did. Similarly, there was no evidence suggesting that Skalso knew about the child and he was not charged. Chapman believes that charges were brought against the Respondents based on the totality of his investigation. Johnson's testimony was important to this investigation, but it was not the only piece of evidence.

On re-direct examination, Chapman testified that during the interview with Matos, she stated that she believed that a Hispanic male officer appeared to be in charge and that he had a conversation with Johnson and herself about who was going to take custody of the child. Matos claimed that it was this Hispanic male officer who directed her to be uncuffed and to take custody of the child, and that the baby was crying during this entire

incident. Matos also indicated that everyone there knew that there was a child inside of the van.

Chapman testified that during his interview with Bracero, she claimed that the child was in Steven's van during the incident and that Matos was released from custody because Steven had said that she (Matos) was the baby's aunt. Bracero also stated that there were lots of officers present but she did not indicate whether the child was removed from the van prior to anyone being placed in the prisoner van.

During Chapman's interview with Steven, he stated that the child was inside of the van during the incident and that Respondent Rodriguez was part of the conversation that led to Matos being released from custody. Chapman stated that he did not recall if Steven mentioned there being a Hispanic female officer present. Looking at PG section 215-01 (RX B), there is no "or" between the sections "process child for child requiring shelter" and "prepare Aided Report worksheet."

During further questioning by the Court, Chapman stated that Matos was not the child's aunt, but that she had stated such when she was at the scene of the incident.

Detective Ronald Johnson

Johnson, a 13-year veteran of the Department, is currently assigned to IAB and is awaiting retirement. Johnson has been with IAB for approximately ten years and before that he was assigned to the 90 Precinct in Brooklyn. Only once during his career was Johnson ever the subject of a disciplinary case, which is the current matter being considered. Johnson pled guilty to the charges against him.

Johnson stated that he remembers being part of the edit operation on February 27,

2007, in the Bronx in the vicinity of 161 Street and Grand Concourse Village. The goal of that operation was to “gain intel” on corruption within the Department. Johnson does not remember all of the officers who were present for the operation, but recalls the Respondents, Duncan, and Seabrooks all being present. There were other officers present as well.

On the day of the operation, Johnson was the arresting officer for three individuals in connection with the sale of narcotics: Bracero, Steven, and Thomas. Johnson stated that he had worked with Respondent Rodriguez for over ten years and Respondent Mifsud for two years. Johnson testified that Respondent Rodriguez was the commanding officer for the entire edit operation and that Respondent Mifsud was the supervisor for the arrests and the arrest processing.

Johnson stated that one of the undercover officers made a narcotics transaction with one of the males sitting inside of Steven’s van and that he learned that he was to make the arrests after receiving a radio transmission from Respondent Rodriguez. Johnson was with Duncan and they pulled their car directly in front of the van to block it. Inside of the van were two adult males, one adult female, and one child. The adults were all detained outside of the van and more officers arrived on the scene.

At some point, seven to ten minutes after the initial detention of these individuals, the Respondents arrived on the scene in a car together. The three adults were being detained by officers and the child, approximately five years old, was in the van. Upon arriving, Respondent Rodriguez was standing approximately five yards away from Johnson while getting information from the undercover officer as well as from Johnson. Johnson stated that Respondent Rodriguez told him that Steven, Bracero, and Thomas

should be arrested. Bracero was not apprehended in the van with the others.

When Johnson initially approached the van, Matos was seated in the middle seats, behind the driver and passenger. Johnson testified that Matos was originally detained with the other suspects, but that when Respondent Rodriguez arrived and was gathering information, he told Johnson that she was not to be arrested with the others. Johnson does not recall where Respondent Mifsud was standing at this time, but, is certain that she was present at the scene.

Johnson stated that he asked Steven who the child's mother was and for her contact information. He said that he did not know either. Johnson stated that Steven then told him "that Ms. Matos was the child's aunt and that to leave the child with Ms. Matos." During this conversation, Johnson was standing right next to Matos, Steven, and the van. Respondent Rodriguez was still standing the same distance away on the sidewalk, and although he recalls that Respondent Mifsud was on the scene, he does not remember where. Bracero, Steven, and Thomas were all placed under arrest and put into the prisoner van.

At some point, Johnson stated that he searched the van and that he did not find any narcotics or contraband, but the child was present. From the time that Johnson initially approached the van, it was apparent to him that there was a child inside of it.

In connection with the incident, Johnson gave two interviews to the Department and he was truthful during them. Johnson stated that he does not recall whether Respondent Mifsud was with him at the time he searched the van. After having his recollection refreshed, Johnson stated that he believed that both of the Respondents were watching him while he was searching the van. During this time, the child was crying and

he stopped crying when Matos picked him up.

During the incident, Johnson never lost sight of the van and never saw anyone enter or leave the van other than the individuals who were apprehended and the child. The time of arrest was 11:30 a.m., which was when Respondent Rodriguez stated that the three individuals should be arrested. Johnson testified that he had a conversation with Respondent Rodriguez about what to do with the child since his mother could not be located and that Respondent Rodriguez was present when Matos was given custody of the child.

Initially, Johnson stated that he did not recall if Respondent Mifsud was present for these interactions, but after having his recollection refreshed, he stated that she was also present. Before Matos was released, Johnson checked her identification and got her address, but did not do any background check whatsoever. Johnson testified that he was aware that the child was present in the van at the time of the drug sale.

Johnson stated that he did not notify ACS, complete an Aided Report, or a Domestic Incident Report, and that neither of the Respondents directed him to do any of these things. Johnson filled out the arrest paperwork under the supervision of the Respondents. He did not charge the arrested with endangering the welfare of a child, nor was he directed to do so. Johnson claimed that he pled guilty to the fact that he did not turn over a copy of a voucher (Property Clerk Invoice, RX I) for Steven's money to Steven.

During cross-examination, Johnson stated that in taking the guilty plea he was taking responsibility for that act of misconduct. Prior to joining the Department, Johnson worked for the New York City Department of Corrections and on September 30, 2009, he

will retire with a full pension. Johnson discussed his future plans with the Department Advocate's Office (DAO). Prior to testifying, Johnson was only asked to review his second interview, which placed the Respondents at the scene, whereas in his first interview he did not place them there. Johnson testified that he felt that it was implied that he could get into trouble with DAO if his present testimony was different from the testimony he gave in his second interview.

On February 27, 2007, the edit operation team met at the office in Queens to review the tactical plan (RX H) for the day before heading up to the Bronx. There were six different vehicles assigned and Johnson was in the same car with Duncan. One of the undercover officers that day was Detective Mouchette who was acting as the ghost. There were two other undercover officers, but Mouchette was the only ghost. Johnson stated that he does not recall where each member of the edit team was positioned prior to the arrests. The ghost would communicate via radio with Respondent Rodriguez and Respondent Rodriguez would then direct the officers.

Johnson stated that he had done operations like this with Respondent Rodriguez before in the past and that he would typically arrive on the scene before Respondent Rodriguez, which was the case on that day as well. Johnson searched the van 15 or 20 minutes after arriving on the scene and the child was still inside. When the child was handed over to Matos, she went into the van to get him, and Johnson stated that he was standing right next to her at this time. Prior to Matos taking the child, Johnson claimed that he had no contact information for the child's mother, but that Matos was the child's aunt and that he consented to her taking him. Respondent Rodriguez was present for this conversation and Johnson discussed with Respondent Rodriguez whether or not this was

okay.

During cross-examination, Johnson stated that Respondent Mifsud was his supervisor unless Respondent Rodriguez was present. At the time of the incident, there was a large amount of pedestrian traffic on the sidewalk and things were confusing because of the number of people. Johnson stated that when he and Duncan first approached the van he could not tell there was a child present while they were still in the car, but that when he got out and walked up to the window of the van he could see him. However, someone who was on the set outside of the van doing something else would not be able to tell that a child was inside.

At the time that he was looking into the van, Johnson claimed that he was not sure what Respondent Mifsud was doing. Johnson recalls having the conversation about what to do with the child with Respondent Rodriguez and no one else. He recalls Respondent Mifsud being somewhere on the set, but, does not recall if she was privy to the discussion of what to do about the child. Prior to the Respondents arriving on the set, there were two other supervisors present. The Respondents arrived on the scene 15 to 20 minutes after Johnson because they were searching for another female suspect who was never apprehended.

Before the Respondents arrived, Seabrooks and Skalso were present, but Johnson stated that he did not recall discussing the child with either of them. During the first PG interview, Johnson stated that he did not recall if he said anything to Respondent Mifsud about the child. At his PG interview on September 5, 2007, Johnson recalled stating that he was unsure if all three supervisors were present, but that he was sure that Respondent Rodriguez was there. He stated that he was being truthful when he said this.

Johnson stated that on the day of the incident, Matos did not exhibit any signs of intoxication and that it was his professional opinion that she was not under the influence of drugs or alcohol. She was calm, and based on Steven stating that she was the child's aunt, Johnson felt comfortable leaving the child with Matos. Today, Johnson knows that Steven was lying. He did try to track down the child's mother but Steven did not give him any information about her.

Johnson filled out a voucher for the money taken from Steven (RX I) and Respondent Mifsud signed off on it, which means that the contents of the voucher are accurately described on the voucher. Johnson stated that Respondent Mifsud expected that the policy of giving a copy of the voucher to the arrested individual would be complied with. Johnson did not recall if he gave a copy to Steven.¹

The Respondents' Case

The Respondents testified in their own behalf.

Respondent Rodriguez

Respondent Rodriguez, a 28-year veteran with the Department, has been assigned to IAB for the past nine years and has participated in approximately 5,000 to 6,000 arrests in his career. His assignment in IAB is to conduct different types of enforcement operations, but mostly ones that are narcotics-based. In the past nine years, he has conducted hundreds of these operations. Prior to coming to IAB, Respondent Rodriguez

¹ It must be noted that the proceeding was adjourned for the testifying witness, Johnson, to obtain legal counsel before continuing his testimony. Johnson never reappeared at the subsequent proceedings and in turn, retired from the Police Department. Johnson stated during his testimony that DAO implied he could get in trouble if his testimony differed from his second interview.

was a sergeant in the vice unit where he supervised hundreds of arrests.

On February 27, 2007, Respondent Rodriguez was the team leader for a buy and bust operation in the Bronx. The other supervisors for this operation were Scalso, Seabrooks, and Mifsud. One of the undercover was acting as the ghost who relayed everything that he saw to Respondent Rodriguez. The ghost observed another undercover officer make a narcotics purchase from a female who was standing outside of a van. The female had a separate transaction with the people inside the van and then sold heroin to the undercover. During this episode, which was relayed by the ghost to Respondent Rodriguez, he was positioned about two blocks away.

The ghost was wearing a "ghost kit" which is an earpiece attached to the radio that is on his person and that transmits to other members of the field team. Respondent Rodriguez had worked with the ghost for a handful of years and he was very experienced. The ghost did not inform Respondent Rodriguez that there was anyone inside of the van besides two men who gave the female heroin.

Approximately five to ten minutes after the narcotics transaction, Respondent Rodriguez ordered the team to move in and make the arrest. Respondent Rodriguez did not accompany the team to make the arrests as he and Respondent Mifsud were searching for a fourth "unapprehended perpetrator." They were never able to apprehend this fourth perpetrator. Respondent Rodriguez arrived on the scene approximately 15 minutes after the arrests and when he arrived, Scalso and Seabrooks were already present. Three individuals had been arrested by the team: Steven, Thomas, and Bracero.

At this time, the van had already been searched, and Johnson motioned to a child standing next to a woman. Johnson reported to Respondent Rodriguez that the child was

the son of one of the perpetrators who was arrested, and that he wanted the child to go with the woman, Matos, who was the child's aunt. The child was approximately three years old and showed no signs of abuse or neglect. Respondent Rodriguez believed that Matos was the child's aunt based on what Johnson had told him and this was corroborated when Steven told him personally that she was the child's aunt and that he wanted the child released to her.

Respondent Rodriguez further stated that he had no reason to believe that Matos was not the child's aunt or that the child would be in any danger by releasing him to Matos. Matos was not arrested and Respondent Rodriguez stated that he had no information that Matos had been involved in any criminal activity. Prior to Respondent Rodriguez approving the release of the child to Matos, Johnson filled out a UF-250, and Respondent Rodriguez was present for this. No warrant check was performed for Matos and Respondent Rodriguez is not aware of any directives in the PG that requires an officer to conduct a warrant check when filling out a UF-250. Respondent Rodriguez stated that a warrant check would not reveal any information about a person's criminal history.

Respondent Rodriguez testified that he is not aware of any directive of the PG that requires notifying ACS after releasing a child into the custody of a relative. In the past, Respondent Rodriguez has encountered situations where he notified ACS following a parent being arrested when a child was present. Respondent Rodriguez does not recall everything that was seized during the arrest, but remembers that \$2,003 was vouchered by the officers. Respondent Rodriguez was not involved in creating the voucher because he was debriefing the prisoners.

Steven was charged with criminal sale of a controlled substance and criminal possession of a controlled substance and Respondent Rodriguez was never aware of there being a child present during the transaction. Respondent Rodriguez made the initial referral to IAB after this incident.

During cross-examination, Respondent Rodriguez stated that he was not able to see the van where the transaction took place from where he was parked. Following the drug sale and during the time that the Respondents were searching for the fourth perpetrator, the van was never left unattended. According to the ghost report prepared on the day of the incident (RX D), the sale took place at 11:25 a.m. Respondent Rodriguez testified that he was on the set when the undercover officers confirmed the identity of those who had been arrested. According to the report filled out by the undercover who made the purchase (RX C), the arrest was made at 11:30 a.m., five minutes after the time of sale.

Respondent Rodriguez stated that he had no knowledge that Matos was inside of the van at the time of the transaction and that he never observed her in handcuffs. A UF- 250 is filled out after the police stop, identify, and question someone. Respondent Rodriguez stated that he did not recall if the UF-250 filled out on that day for Matos stated if she was in handcuffs. Respondent Rodriguez spoke to Matos and she confirmed that she was the child's aunt. He believed Matos and thought that she was trustworthy. Respondent Rodriguez also spoke to Steven, who he believed and thought to be trustworthy, and who also confirmed that Matos was the child's aunt.

Respondent Rodriguez testified that he never asked Johnson where the child came from or if the child was present in the van at the time of sale. He further stated that he

did not ask any members of his field team about how Matos fit into the entire situation, nor did he ask Johnson to do any investigation into her background. Respondent Rodriguez did not ask Johnson or anyone else to fill out an Aided Report to see if the child needed medical attention, or to contact ACS. Respondent Rodriguez never asked anyone on his team if the child was in the vicinity of the drug deal.

Respondent Rodriguez does not know the exact location of where Johnson was set up with his car prior to the sale, but knows that he moved in next to the van immediately after he was told to do so. The van from which the perpetrators sold heroin out of was never impounded and an inventory search was never done, but a search for evidence was conducted on the scene by Johnson. Respondent Rodriguez asked Johnson what evidence he found in the van and he told him that there were no narcotics present. Johnson did not ever tell Respondent Rodriguez that there was a child, a car seat, or baby food inside of the van.

None of the officers told Respondent Rodriguez that Matos was inside the van during the sale, nor did he ask any of them if she was. No one ever told Respondent Rodriguez that the child was dropped off onto the scene after the drug deal took place. Respondent Rodriguez never asked any members of his team whether Matos was the unapprehended perpetrator. Respondent Rodriguez does not recall if the undercover officers identified Matos as being present during the drug transaction.

Prior to arriving on the scene, Respondent Rodriguez was with Respondent Mifsud, but he does not recall what she was doing once they arrived. They both left the scene together in the same vehicle. Respondent Rodriguez did not instruct anyone to fill out a Domestic Incident Report or a suspected child abuse form. At his first Department

interview with Chapman on or about June 28, 2007, Respondent Rodriguez stated that he did not see a child at the scene of the arrest. He further stated that narcotics, such as heroin, are inherently dangerous substances and that they are even more dangerous to children if ingested.

Respondent Rodriguez testified that he is not an expert in child abuse or negligence and that it is mandatory for all officers to report any suspected child abuse or negligence. He further stated that it is a serious matter to make this determination and that it requires some investigation.

On further direct examination, Respondent Rodriguez stated that Scalso was of equal rank to him, but that as the team leader, Respondent Rodriguez was responsible for operations of the command. Respondent Rodriguez stated that the search for the unapprehended suspect took place on 161 Street in the Bronx and that the street is very crowded with both vehicles and pedestrians. After approximately 15 minutes, the Respondents gave up and went to the scene of the narcotics sale. Respondent Rodriguez stated that he felt that it was very important that the undercover officers were in cars since the rest of the field team was occupied.

When they got to the scene, there was a large crowd of people, some people in custody, and the prisoner van was present getting ready to take the prisoners away. Respondent Rodriguez separated from Respondent Mifsud when he went over to speak with Johnson and he does not know specifically what she was doing on the scene. Respondent Mifsud was a very experienced sergeant and did not need to be micromanaged. The team of undercover officers and the ghost were also very experienced.

Respondent Rodriguez stated that he was not able to see the drug transaction, but that he heard it take place over the radio. He also stated that he only found out that Steven had been lying about Matos being the child's aunt when he became aware of the actual investigation. When Respondent Rodriguez left the scene with Respondent Mifsud, they were in an unmarked car, and they continued working at other sets. They never discussed that there was a child around the scene of the drug sale. To the best of Respondent Rodriguez's knowledge, Respondent Mifsud never knew that there was a child on the scene.

On redirect examination, Respondent Rodriguez stated that prior to the interview, he was not given any documents to review and when he was in the interview room, that was the first time that he saw any documents on this case. At the time of that interview, Respondent Rodriguez did not specifically recall the arrest that occurred on February 27, 2007. After a recollection of the actual incident, Respondent Rodriguez recalled there being a child present at the scene. Respondent Rodriguez stated that his only duties with regard to the child were to release the child to his aunt since the child's father was being arrested in the presence of a relative.

On redirect examination, Respondent Rodriguez stated that it was his decision to release the child to Matos, and not Respondent Mifsud's decision.

Upon further questioning by the Court, Respondent Rodriguez stated that Bracero is a female, that she was the one who actually handed the narcotics to the undercover, and that she was never present inside of the van. Respondent Rodriguez stated that he authorized the arrests for the three individuals taken into custody. Respondent Rodriguez also stated that Respondent Mifsud's assignment for that day was to work the tech

vehicle that he was also present in. He did not give Respondent Mifsud an assignment for arrest processing.

Respondent Mifsud

Respondent Mifsud has been with the Department for 17-and-a-half years and is currently assigned to IAB Group 56. She has been with this group since returning from maternity leave in May 2009. Upon joining the Department, Respondent Mifsud was a patrol officer in the Housing Bureau for about ten years, then was a school safety sergeant for about two years and then moved into IAB Group 52.

As a school safety sergeant, Respondent Mifsud was the supervisor in the precinct who was in charge of all the youth officers and who oversaw all of the schools. In this job, there is a lot of interaction with kids and as a result of that experience, Respondent Mifsud finds herself at little more sensitive to cases involving children.

Respondent Mifsud vaguely remembers the day of this case after sitting through the proceedings, and was assigned with Respondent Rodriguez as the tech person monitoring the radio and KEL system. The KEL system is what the officers use to hear the ghost and undercover officers in the field. The operation that day was an edit operation, which is where the officers do a buy and bust operation on the streets. At some point that day, the ghost informed both of the Respondents of the pertinent details of the narcotics transaction over the KEL system.

Respondent Mifsud stated that after the information was relayed, Respondent Rodriguez directed the field team to move in while the Respondents searched for the female that had left the scene. The Respondents canvassed the area by car for 15 or 20

minutes and then proceeded to the set at 161 Street and Morris Avenue. Respondent Mifsud stated that she was concerned about the size of the crowd that had gathered and focused on them to make sure that no one in the crowd tried to incite the officers or throw anything. During this time, Respondent Mifsud did not know what Respondent Rodriguez was doing.

Respondent Mifsud testified that while she was doing crowd control by herself, she noticed lots of kids in the crowd, but she had no way to tell if they pertained to the set or not. Respondent Mifsud further stated that she had no information about a child on the set, that no one told her that there was a child involved, and that she had no contact with Respondent Rodriguez or Johnson on the set. Upon leaving the scene after the arrests had been made, Respondent Mifsud had a conversation in the car with Respondent Rodriguez, but there was no mention of a child involved with the buy and bust. Had Respondent Mifsud known about the existence of the child, then she would have made sure that certain paperwork was filled out based on her experience working with children.

Later in the day at the 45 Precinct, Respondent Mifsud directed Johnson to fill out a property clerk invoice that she signed (RX I). In general, the arresting officer fills out these vouchers and the supervisor checks to make sure that everything is accurate and accounted for. For the property voucher filled out by Johnson, Respondent Mifsud recalls verifying the amount of money that was placed in the bag and also making sure that the other information was accurate. Respondent Mifsud stated that she told Johnson to give the pink carbon copy of the voucher to the prisoner, that he acknowledged her order, and that she expected that the copy would be given to the prisoner. Seabrooks was helping out with the vouchering process, but Respondent Rodriguez was not involved.

During cross-examination, Respondent Mifsud stated that when she arrived on the scene, she did not set up a perimeter; rather, she stood facing the crowd as the rest of the officers had their backs to them. Respondent Mifsud stated that if she had to guess, she was about two car-lengths away from the van that had been used in the narcotics sale. She further stated that it would be accurate to say that she was the arrest supervisor to Johnson that day, but that Respondent Rodriguez was the higher ranking officer in the field.

Respondent Mifsud testified that she did not see Respondent Rodriguez speaking to Johnson about a child and that she never heard a child crying or screaming or being removed from the van. During her official Department interview, Respondent Mifsud did not mention anything about doing crowd control, and claimed that she was not asked. She claimed that the \$2,003 that was recovered was a noticeable amount of money and that it was seized for asset forfeiture.

After telling Johnson to give a copy of the voucher to the prisoner, Respondent Mifsud never checked up to make sure that this was done. Respondent Mifsud supervised Johnson's paperwork that was done for the three arrests that took place. Respondent Mifsud never interviewed or asked Johnson about what happened during these arrests because she felt that she was already privy to the relevant information because she was in the tech auto. Respondent Mifsud further stated that she does not recall Johnson testifying that Matos was present in the van, nor does know that Matos was in the van at the time that Johnson showed up. She also stated that she was not aware that the undercover officers viewed Matos and confirmed that she was not part of the sale. No radio transmission was made with regard to Matos.

Respondent Mifsud stated that she never had any conversation with Johnson about his search of the vehicle. Respondent Mifsud stated that if drugs had been recovered from the vehicle, that this would be noted in the paperwork. If a person is arrested for dealing drugs in the vicinity of his own young child then certain notifications, forms, and tasks must be performed, including notifying ACS. When such a notification is made, part of the notification is filling out a suspected child abuse and neglect form.

On redirect examination, Respondent Mifsud stated that the PG does not require a supervisor to check to ensure that each and every order given is complied with. Respondent Mifsud read the ghost report (RX D) and the buy report (RX C) in this case and neither of those reports mention there being a child on the scene. No one mentioned there being a child on the scene to Respondent Mifsud. Respondent Mifsud understands that she is under oath.

Upon further questioning by the Court, Respondent Mifsud stated that she believed that Skalso and Seabrooks were the first officers to arrive on the scene with the arresting team. Respondent Mifsud testified that she did not verify any of the arrests that were made by Johnson at the scene. Respondent Mifsud stated that at her Department interview, she claimed that based on her experience working with kids she would have made the proper notifications if she had been aware of any situation dealing with a child. Respondent Mifsud clarified that she was the arrest processing supervisor with respect to the paperwork filled out at the precinct, not on the scene.

During further cross-examination, Respondent Mifsud stated that Skalso is a short white male, and that Seabrooks is a heavy-set black male.

During redirect examination, Respondent Mifsud testified that she is familiar with

PG 206-13 and that it states that you are required to answer questions that are specifically related to your duties, but there is no requirement to volunteer information.

FINDINGS AND ANALYSIS

The charges against Respondents Rodriguez and Mifsud are exactly the same.

Disciplinary Case No. 83729/08

Specification No.1

Disciplinary Case No. 83730/08

Specification No. 1

Respondents Rodriguez and Mifsud stand charged herein with failing and neglecting to prepare required reports, to wit: Report of Suspected Child Abuse or Maltreatment form, an Aided Report, and a Domestic Incident Report. Respondent Rodriguez is found Guilty.

Evidence adduced at trial established that Respondent Rodriguez arrived at the arrest location ten minutes after the van occupants had been placed in handcuffs. Respondents Rodriguez and Mifsud had an unsuccessful search for one of the suspects who fled on foot. Once at the scene, however, Respondent Rodriguez took control and became the supervisor who authorized the arrests. Johnson, the arresting officer, stated that he informed Respondent Rodriguez of what had transpired. He informed him that all the van occupants were in handcuffs and that a child, approximately five years of age was still inside of the van and he wanted to know what to do with the child.² Johnson testified that Respondent Rodriguez directed him to remove the handcuffs from Matos and release the child to Matos. Johnson also testified that Matos informed him that she was the child's aunt. Johnson further testified that no drugs were found on Matos nor were any

² Johnson testified the child was five years old, Respondent Rodriguez said three years old, Matos's statement lists the child as less than one, and Bracero said the child was a couple of months old.

drugs recovered from the van and thus the child was released to Matos.

Although Respondent Rodriguez tried to distance himself from knowing that a child was in the van, he knew a child was at the scene, he authorized who was to be arrested and who was to be released. The child was released to the custody of Matos and Respondent Rodriguez had to authorize that decision. The child was present where the arrests were transpiring. Matos had handcuffs on and stated in her statement (DX 3B) that a male Hispanic “who looked like a Sergeant or something” had her handcuffs removed and told her to take the baby. The fact that drugs were sold from the van where Steven’s child was present should have prompted the Respondent to institute procedures to safeguard the welfare of the child. PG 215-03 refers to the procedure to be followed to protect a child from abuse or maltreatment in an emergency, which included preparing an Aided Report, Suspected Child Abuse form and a Domestic Incident Report.

Respondent Mifsud is found Not Guilty. When Respondent Mifsud and Respondent Rodriguez arrived at the location, Respondent Rodriguez, a lieutenant and the highest ranking officer at the scene took charge. His actions could not be imputed onto Respondent Mifsud. Respondent Rodriguez testified that although Respondent Mifsud arrived with him, he did not know what she was doing and to the best of his knowledge she did not know that a child was on the scene.

Respondent Mifsud testified that she began crowd control alone to prevent members of the public from intervening in the location where her command was making drug arrests. She testified that at no point was she near the van, had conversation with anyone related to the van occupants and did not verify any arrests at the scene. She testified that she verified arrest paperwork once back at the command, but she was never

made aware through her own observations, communications with members of the service nor through arrest paperwork that was generated for her signature, that there was a minor at the scene of the buy and bust operation. The Department presented no evidence to contradict this testimony. Although Respondent Mifsud was at the scene of the buy and bust operation, the fact that she was engaged in crowd control could reasonably have prevented her from taking part in the arrest process. To make her responsible for the actions of a superior officer at the scene of the arrests she did not participate in would be patently unfair. In fact, the Department witness who gave partial testimony, Johnson, testified that although he knew Respondent Mifsud was at the buy and bust location, he could not place her near the van and had no idea where she was or what she was doing.

Even if Respondent Mifsud was present at the scene as Johnson testified to when the van was searched, if she was performing other police functions such as crowd control, she would not be privy to a child being on the scene. By all accounts, the scene was full of pedestrians. Respondent Mifsud may not have been in the position to distinguish who was part of the police investigation and who was not. Without evidence to support the allegation that Respondent Mifsud knew a minor was on the scene of the operation, the Department has failed to prove this charge by a preponderance of the credible evidence.

Accordingly, I find Respondent Rodriguez Guilty and Respondent Mifsud Not Guilty of Specification No. 1.

Disciplinary Case No. 83729/08
Specification No.2
Disciplinary Case No. 83730/08
Specification No. 2

Respondents Rodriguez and Mifsud stand charged herein with taking property into custody to wit: funds removed during Steven's arrest processing, and failing and neglecting to provide a copy of the corresponding Property Clerk Invoice as required. The Respondents are found Not Guilty. It was established at trial that Respondent Rodriguez was the overall supervisor of the buy and bust operation. He had subordinate supervisors, such as Respondent Mifsud who were in charge of supervising the arrest paperwork back at the station house. There was no testimony at this trial to support the notion that Respondent Rodriguez oversaw the taking of funds from prisoners during the arrest processing. Therefore he would not be the supervisor in charge of insuring that a copy of the Property Clerk Invoice was provided to any of the arrestees, including Steven.

Respondent Mifsud acknowledged that she oversaw the vouchering of evidence and that a Property Clerk Invoice was prepared and she directed Johnson to give the pink copy to Steven. To sustain this charge would require reliance on Steven's statement that he never received the copy. However, Steven never appeared at this proceeding despite being notified to appear. His credibility could not be established in Court. However, his credibility was at issue because he advised the investigator on the case, Chapman, that he never sold drugs, yet he was arrested in this matter for drug sale, and the ghost report (RX D) described Steven as the person who supplied the glassines. Based on this evidence, the Court cannot sustain a charge of misconduct against Respondent Mifsud

based on a sole hearsay statement of Steven.

Accordingly, I find Respondents Rodriguez and Mifsud Not Guilty of
Specification No. 2.

Disciplinary Case No. 83729/08
Specification No.3
Disciplinary Case No. 83730/08
Specification No. 3

Respondents Rodriguez and Mifsud stand charged herein with engaging in conduct prejudicial to the good order, efficiency or discipline of the Department for failing to notify the Administration for Children's Services of suspected child abuse or neglect. Respondent Rodriguez is found Guilty. Respondent Mifsud is found Not Guilty. As stated in Specification No. 1, once Respondent Rodriguez took over the buy and bust operation and became the supervisor who authorized the arrest, pursuant to the PG, he had a duty to take control of the minor child who was in the van from which drugs were sold to undercover officers. He had a duty to also notify ACS of the situation. His action or lack of action as supervisor in charge could not be imputed to Respondent Mifsud.

Accordingly, I find Respondent Mifsud Not Guilty and Respondent Rodriguez Guilty of Specification No. 3.

Disciplinary Case No. 83729/08
Specification No.4
Disciplinary Case No. 83730/08
Specification No. 4

Respondents Rodriguez and Mifsud stand charged herein with failing and neglecting to conduct an investigation to determine whether Matos had outstanding warrants. The Respondents are found Not Guilty. There are no requirements in the PG which states that a warrant check is required before a child is released to someone. In fact, the PG spells out in section 215-03 the procedures to follow and the reports to be prepared when a child is to be removed on an emergency basis based on the imminent danger or potential abuse situation. The PG spells out the procedure to follow and reports to be prepared where children or minors require shelter particularly where a parent has been arrested. There is no mention in the PG of requirement to conduct a warrant check in this situation. In fact, as Respondent Rodriguez testified a warrant check would not reveal Matos's criminal history and as such, would not have provided any background information on Matos and would therefore be irrelevant.

Accordingly, I find Respondents Rodriguez and Mifsud Not Guilty of
Specification No. 4.

Disciplinary Case No. 83729/08
Specification No. 5
Disciplinary Case No. 83730/08
Specification No. 5

Respondents Rodriguez and Mifsud stand charged herein with failing and neglecting to conduct an investigation in that they failed to charge Steven with an

appropriate section of the Penal Law during an arrest. Respondent Mifsud is found Not Guilty. Respondent Rodriguez is found Guilty. It has been established that once Respondent Rodriguez arrived at the scene of the arrests and took charge, he authorized the arrests that were made. It has also been established that Steven sold drugs to an undercover officer from a van which contained his minor child. To do this is very dangerous and placed Steven's minor child at risk of harm. Steven's criminal charges should have included endangering the welfare of a child. Since Respondent Rodriguez supervised the arrests made at the buy and bust operation and he did not see that this charge was included against Steven, he should be held accountable. However, as previously stated, Respondent Rodriguez's errors could not be imputed onto Respondent Mifsud who was not the overall supervisor in charge at the operation.

Accordingly, I find Respondent Rodriguez Guilty and Respondent Mifsud Not Guilty of Specification No. 5.

PENALTY

In order to determine an appropriate penalty, Respondent Rodriguez's service record was examined, see *Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974).

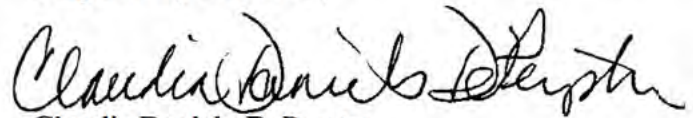
Respondent Rodriguez was appointed to the Department on December 6, 1982. Information from his personnel folder that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

Respondent Rodriguez has been found Guilty of three Specifications. He has been found Guilty of failing and neglecting to prepare required reports, to wit: Report of Suspected Child Abuse or Maltreatment form, an Aided Report and a Domestic Incident

Report when during a buy and bust operation, a child was found to be in the van from which the child's father sold drugs. He was also found Guilty of failing to notify ACS of suspected child abuse or neglect; and failing to conduct an investigation such that Steven would be properly charged during his arrest to include an endangering the welfare of a child charge. The Advocate asked for a penalty of 20 vacation days.

Accordingly, I recommend that the Respondent forfeit 20 vacation days.

Respectfully submitted,



Claudia Daniels-DePeyster
Assistant Deputy Commissioner Trials

APPROVED
OCT 13 2010

RAYMOND W. KELLY
POLICE COMMISSIONER


POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
LIEUTENANT RAFAEL RODRIGUEZ
TAX REGISTRY NO. 878493
DISCIPLINARY CASE NO. 83729/08

In 2006 and 2008 the Respondent received an overall rating of 5.0 “Extremely Competent” on his annual performance evaluations. In 2007 the Respondent received an overall rating of 4.5 “Above Highly Competent.” He has been awarded four Excellent Police Duty Medals and two Meritorious Police Duty Medals in his career.

[REDACTED]
[REDACTED]. On May 16, 1985, the Respondent received Charges and Specifications for pushing and shoving a male; engaging in a physical altercation; and addressing a male in a discourteous manner. The Respondent was found Not Guilty.

For your consideration.


Claudia Daniels-DePeyster
Assistant Deputy Commissioner – Trials